

Notice of Allowability

Application No.

10/018,450

Examiner

Timothy P McNulty

Applicant(s)

SCHONLAU ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed 19 July 2004.
2. ☒ The allowed claim(s) is/are 33-40.
3. ☒ The drawings filed on 14 December 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☒ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: Germany 199 26 937.2 08/05/1999.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Claims:

The following changes have been made to cancel claims non-elected without traverse:

Cancel claims 24-32

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance: The prior art discloses or teaches an actuator device comprising a pedal stand mounted to a vehicle having; a base member pivotally attached to said pedal stand about a first axis; adjustable means for fixation attaching said base member to said pedal stand; a generator having a housing; a pedal lever pivotally attached to said base member at a second axis; wherein said pedal lever and said generator are operatively coupled to one another and jointly swivel in relation to said pedal stand, i.e., the pedal lever and the generator jointly rotate about said first axis. See US Patent No. 6,305,239 B1 to Johansson et al.

However, the prior art does not disclose or teach said pedal lever having a first leg and a second leg wherein pressure asserted on said first leg causes said second leg to act on said generator. The pedal lever of Johansson et al. is a single leg pedal lever. Pedal levers having

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two legs are known in the art. See e.g., German Patent document DE 197 06 692 C1, US Patent No. 6,082,219 to Wolpert (US national application patent of DE 197 06 692 C1). In such pedal levers, each respective leg is from a pivot point to an opposite end of the pedal lever. It is unreasonable to construe a pedal having a pivot point at one end thereof (see e.g., Johansson et al.) as having two legs, to so construe would require arbitrarily segmenting a single leg element into two pieces merely to create two legs. A leg is a branch or appendage, which requires a first and a second end; each end reasonably requires a discontinuity or termination to establish the respective end and thus a leg.

Additionally, the teachings of Wolpert are not applicable to modify Johansson et al. Applicant correctly asserts the structural and functional differences between the applied references. Such differences are not dispositive to a combination but are indicative of a lack of motivation. Wolpert teaches the use of a two legged pedal lever to provide an apparatus that causes the pedal lever to swivel about a first fixed bearing block and a generator fixed at a second block. The apparatus is designed to pivot the pedal lever about the first bearing block when actuated by the generator rod and a second bearing block (when the generator rod actuates the pedal due to a front impact load). Modifying Johansson et al. in view of such teachings would replace a single legged pedal lever with a two legged pedal lever and would not achieve the teachings of Wolpert. The combined structure would result in a two legged pedal lever with the second leg thereof being redundant, because the generator of Johansson et al. is located about the pedal pivot axis and is not needed to be actuated by a second leg as is the generator of Wolpert. One of ordinary skill in the art would not be motivated to modify Johansson et al. in

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view of Wolpert and create a redundant pedal leg, such a modification would only be based on impermissible hindsight and the redundant second leg would not act on the generator as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tpm


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